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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Written statement submitted by Service, Peace and Justice in Latin America (SERPAJ), a non-governmental organization in consultative status, category II

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[31 July 1995]

Impunity

1. Service, Peace and Justice in Latin America transmits herewith its appraisal of and opinions on the running battle against impunity in Argentina.

2. It is public knowledge that the statements by former Captain Adolfo Scilingo have led to a whole set of statements in Argentina by personnel involved in crimes against humanity and by institutional representatives of the armed forces.

3. The statements by the participants in State terrorism have been invoked by human rights organizations as "new developments" to request the reopening of cases which went through the criminal courts with a view to an investigation in order to furnish the relatives of the victims with the

necessary data to identify those responsible and to ascertain in what circumstances and how their disappearance took place. This investigation is based on the right to an "effective remedy" which must be provided by the State and, in particular, on the right of the victims' relatives to mourn and to know the whereabouts of the victims' bodies.

4. In connection with impunity, we consider it very important to redefine the concepts of truth and justice. Such a redefinition involves identifying the acts or omissions of the Government powers which are reaffirming impunity or, alternatively, keeping it "as it is". The Government also has to take specific measures to arrive at a new definition of these concepts. In the case of Argentina, it may be said that the road to the eradication of impunity is full of obstacles that it will be hard to remove. Despite the countless human rights conventions and treaties signed and ratified by the Government of Argentina, the "offences" distort the law and create a loss of faith in institutions designed to protect truth and justice.

5. Combating impunity means that the measures to be adopted have to be effective and have to involve the three Government powers so that the principle of State responsibility may be implemented. The thrust of the measures should be compensation for the victims and society by restoring the rights of which they were deprived; and clear-cut determination by the Government to discourage human rights violations. In this connection, persons against whom there is sufficient evidence of responsibility for the commission of crimes against humanity (torture, disappearances and executions) have to be separated from the military and the security forces. Such measures would discourage the commission of crimes of this kind and help to build trust in democratic institutions. It is public knowledge internationally that the executive has refused to act along these lines; not only has it not taken measures to democratize and reorganize the forces, but it has also rewarded officials responsible for committing violations by giving them promotions.

6. The attitude of the executive requires us to revise the concept of truth and the means of finding it. The only thing it has done in response to the requests of human rights organizations is to publish lists of missing persons with information provided only by the relatives of the victims and by CONADEP, so that the truth of action by the Government is that it is biased by the action of the victimized society itself and then portrayed by Government spokesmen as being "new". The truth cannot be only information provided by the victims, but must also include Government action in which the three powers take part. Otherwise, the result would be the Government's "irresponsibility" for State terrorism.

7. The judiciary has to conduct the investigation of the facts as they relate to the victims without reference to the due obedience and clean slate acts that are in force. The existence of the impunity acts are no obstacle, since it can be claimed that the investigation will satisfy the right of the victims and society to learn the truth of what happened under the former military dictatorship. Those acts give effect to impunity in respect of the criminal responsibility of the perpetrators, and this means that the right of the victims and of society as a whole cannot be linked to the impunity of the

perpetrators. This assertion is being sharply criticized in Argentina because the Federal Criminal and Correctional Court recently handed down a very ambiguous decision ordering the virtual cessation of investigations.

8. Whereas the judiciary may investigate specific cases, the legislature may investigate particular situations by establishing special commissions. On the basis of this position, human rights organizations in the capital of Argentina submitted a proposal to both Chambers for the establishment of a bicameral commission to investigate the crimes committed during the period of State terrorism and human rights organizations in two provinces in the interior of the country, Salta and Santa Fe, submitted a similar initiative.

9. The elected representatives of the people can shed light on the facts by requesting information from the other branches of Government, thus paving the way for "new testimony" and systematizing the information in order to give it back to its rightful owners, "civil society" itself. It is our understanding that the investigation should include the names and details of persons who were taken to or seen in clandestine detention centres, the names of the authorities who directly ordered the detention and the names of those who carried it out, these being actions which may have physically or psychologically harmed the illegally detained persons, the names of the authorities in charge of the Clandestine Detention Centre (CND) to which the illegally detained persons were taken and the names of the persons who ordered them to be taken there and, in the event of death or disappearance, the names of the persons responsible, the location of the remains and the name of the person who gave the orders for that location. Particular emphasis should be placed on the investigation of the fate of abducted children and illegal adoptions.

10. The executive branch is the least willing and puts up the most resistance to providing compensation for the effects of impunity in Argentina. This assertion is based on conclusive evidence and statements made by the chiefs of staff, who deny the existence of information on missing persons. It is up to the executive to give the other Government powers 1/ the information it possesses and, if this information is destroyed, its duty is to reconstitute it. The Army Command has denied this right to the Federal Criminal and Correctional Court, thereby disregarding the latter's jurisdiction over Army activity. Although the Army representative, General Balza, made a statement recognizing the crimes committed during the dictatorship and the inexcusability of responsibility on the grounds of due obedience for persons who obeyed unjust orders - something that we definitely regard as progress in the thinking and opinions of some members of the armed forces - he called on the members of the Army to make their statements to him personally, promising them reservations. It is highly objectionable that the very institution which is responsible for the violations should receive the testimony. We also consider that it is necessary to strengthen legislation which can eradicate impunity and the judiciary, which can set specific limits on it. It is also the responsibility of the structures and institutions forming part of the executive to remove persons involved in human rights violations from their posts and to dismiss them from the armed forces. The systematic refusal of the ministers and the Office of Head of State to separate the persons responsible for human rights violations from the armed forces is ethically untenable.

11. In the Federal Capital and the provinces of Santa Fe and Salta, human rights organizations have called for the dismissal of all personnel involved in the violations committed under the former military dictatorship, but there has been no positive response and, in some cases, their request has not even been answered.

12. In the case of Argentina, the resolution of the Inter-American Commission on Human Rights recommending the adoption of the necessary measures to shed light on the facts and identify those responsible for human rights violations under the former military dictatorship (IACHR report 28/92) gives some support to the human rights bodies. In considering the report of the Argentine Government on civil and political rights (CCPR/C/79/Add.46), the Human Rights Committee recommended that appropriate procedures should be established to remove from their posts members of the armed forces or the security forces when there was sufficient evidence against them of involvement in widespread human rights violations in the past. It also urged the State party to continue its investigations into the fate of missing persons, urgently to complete investigations into reports of the illegal adoption of the children of missing persons and to take appropriate action. It also urged the State party fully to investigate recent disclosures of murders and other crimes committed by the military during the period of military Government and to take action on the basis of the results. These recent developments have brought the question up again on both sides of the Rio de la Plata. In Uruguay, the investigation of events which took place during the military period and which led, inter alia, to the enforced disappearance of persons is also essential.

Notes

1/ The judiciary may exercise this power, but the legislature can do so only if it sets up the investigation commission.